

**SOCIO-ECONOMIC AND POLITICAL CONSTRAINTS ON  
CONSTITUTIONAL REFORM IN SWAZILAND**

By

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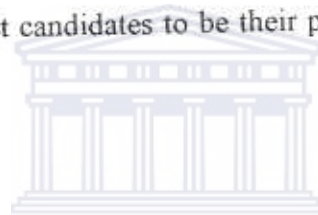
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## ABSTRACT

This study looks at socio-economic and political constraints on Constitutional Reform in Swaziland, an independent state with a fully autonomous government that falls under the Monarch who is Head of State. Swaziland maintains strong economic and trading links with South Africa also maintains such ties with other states, especially in the SADC region.

Up until 1973, the country's constitution was Westminster based. This was revoked and replaced with a system designed to facilitate the practice of both western and traditional styles of government. This system incorporates the system known as Tinkhundla and provides for the people to elect candidates to be their parliamentary representatives for specific constituencies.



During recent years, a general feeling has emerged that the system should be reviewed to create a more democratic climate. This has been exacerbated by political pressure for the international community thus resulting into economic sanctions imposed on Swaziland. In 1992 the first Review Commission was held to seek public opinion on how the Tinkhundla system could be revised.

Swaziland's legal system also operates on a dual basis comprising both traditional Swazi National courts as well as constitutional courts. The constitutional courts have the final ruling in the event of any contention arising between the two legal systems. The Tinkhundla system of government has been under pressure from both local trade unions

and the international community. Their argument for political change is based on the fact that the present system of government tends to reward a few at the expense of the majority and that ordinary citizens have no platform on which to voice out their feelings and/or ill feelings on the manner in which they are governed. The media is not allowed to talk badly of the Monarchy; people are evicted from their land just because of failure to welcome an individual person from royalty to be their chief. People in higher authority in government –such as the previous Prime Minister- defied two court orders and are responsible for the current judicial crisis facing Swaziland. All this could be safely attributed to the system of government, which basically is not democratic.



**ABBREVIATIONS**

<b>SNC</b>	-	Swazi National Council
<b>CRC</b>	-	Constitutional Review Commission
<b>BOR</b>	-	Bill of Rights
<b>AIDS</b>	-	Acquired Immune Deficiency Syndrome
<b>HIV</b>	-	Human Immune Virus



**DECLARATION**

I declare that this research report, entitled *SOCIO-ECONOMIC AND POLITICAL CONSTRAINTS ON CONSTITUTIONAL REFORM IN SWAZILAND*, is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Full Name... LOMAKHOZI G. DAMINI Date... 22<sup>nd</sup> September 2005

Signed.....





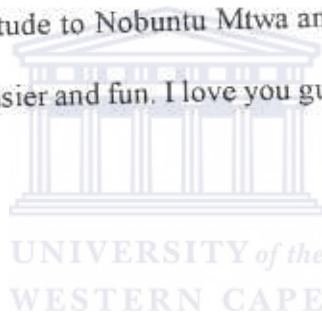
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I also extend my warmest gratitude to Nobuntu Mtwana and Jejamaije Mujoro for making my stay in Cape Town much easier and fun. I love you guys and miss you tons.





## DEDICATIONS

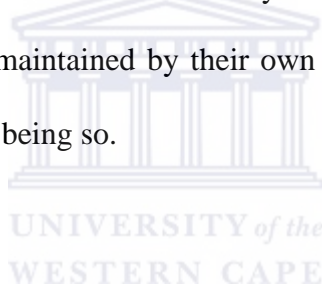
To Mom and Dad for being the pillar of strength throughout my entire life. You have taught me the meaning of loving and being there for someone in sickness and in health. Thank you for bringing out the best in me and for the wonderful childhood I had that made me who I am today. To Malungisa, Manqoba, Phummy and Thembekile, I would not trade you for any other sisters and brothers for you are today and will always be the best. God bless.



## **CHAPTER ONE**

### **INTRODUCTION**

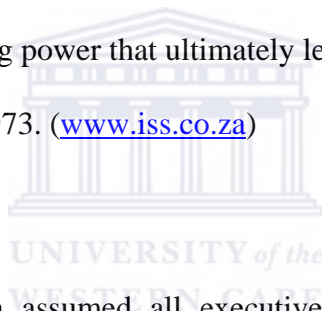
This study focuses on factors that constrain the achievement of constitutional reform in Swaziland, a small, landlocked enclave in southeast Africa completely surrounded by the Republic of South Africa, west and south, and the Republic of Mozambique to the east. It covers an area of 17,364 square kilometers, making it the second smallest country on continental Africa after the Gambia. Most impressive is the fact that Swaziland has maintained its culture, in spite of the influence of European civilization. Many elements of European culture have been assimilated but the whole essentially Swazi culture is still preserved. The culture of Swaziland is still very real and is closely woven into the fabric of the people's lives and maintained by their own institutions. Swaziland's economy is not yet stable and far from being so.



#### **Theoretical Framework**

Democracy and good governance are basically about living as an equal in a society of many and different members. They are about ensuring fair treatment, choices and opportunities for all. They are about the protection of fundamental rights. Very often the governments take these rights for granted and in the process deny some sections of society the choices and opportunities accorded to others in the same society. Governance too is about foresight in the way resources and opportunities are treated and distributed in our societies.

At independence in 1968, a parliamentary multiparty system was established in Swaziland. In reality, however, a political creation of the Dlamini's clan—the Imbokodvo National Movement (INM)—dominated this system. In the elections of 1962 and 1967, the INM won all the seats. The next few years would see King Sobhuza II out-manoeuvre a relatively small group of modernists who sought to reduce the role of the king to that of a constitutional monarch or figurehead. In the elections of 1972, the INM's parliamentary majority was breached when three seats were lost to the opposition. This meant that the INM (and by implication the King) could not amend the constitution and pass new legislation unopposed. The INM and the King sought, unsuccessfully, to overturn this election result in a long and drawn-out court battle. It is widely accepted that it was this defeat and the fear of losing power that ultimately led the late King Sobhuza II to suspend the constitution in April 1973. ([www.iss.co.za](http://www.iss.co.za))



The Swazi monarch then assumed all executive powers previously granted by the constitution to the prime minister and the cabinet. From that day onwards, the king has been able to act wholly at his own discretion, consulting whomever he wished, not bound by law. The decree quoted above gave him the power to detain without charge, and for a renewable 60 days, any person deemed to be a threat to public peace. In addition, the courts lost all jurisdictions to deal with cases of detention. In reality, Sobhuza II 'killed' the Bill of Rights, together with provisions on citizenship, Parliament and the judicial and public service. Political parties were banned, and meetings of a political nature, including processions and demonstrations, had to be authorized by the Commissioner of the Police. This spelled the end of political freedom in Swaziland. Traditional sentiments triumphed

over modern political initiatives granted under a democratic Parliamentary constitutional arrangement. From 1973 to 1978, the Tinkhundla system of government was first put in place as an experiment. This meant that Sobhuza II ruled without an elected Parliament, and made laws by decree.

### **King Mswati III's reforms**

Swaziland's constitutional reform comes at a time when, even though political parties have been banned, a growing lobby for reform is gaining ground with an agenda that has been embraced by a large proportion of the professional classes, trade unions and students. In fact, the ban on political parties has not deterred progressive forces such as the Ngwane National Liberatory Congress (NNLC), the more radical Peoples United Democratic Movement (Pudemo) and the Swaziland Youth Congress. United under a common front called the Swaziland Democratic Alliance (SDA), they have voiced criticism of the current traditional system, advocating the introduction of a constitutional monarchy. In addition, the growing call for political reform has recently included conservative organizations, such as the cultural group *Sive Siyinqaba Sibahle Sinje* (initially thought to be a front for Imbokodvo) and the Swaziland Federation of Labour (SFL).

Since his ascension to the throne, King Mswati III has made several attempts to reform the constitution. After the reports of two Vuselas (consultative commissions established to canvass Swazi opinion on constitutional matters but led by Mswati's brothers), the king established a Constitutional Review Commission (CRC) in 1996. The criteria for

appointing the Commission remained the king's secret. According to Joshua Bheki Mzizi, "the terms of reference are reminiscent of the royal attitude of 1959 in that Commissioners are taking part in the exercise in their individual capacities, and group representations are disallowed throughout the project" ([www.iss.co.za](http://www.iss.co.za)).

The chairmanship of CRC was given to Prince Mangaliso Dlamini, a law professor and Mswati's brother. However, in February 2001, four months before the CRC completed its review, most human rights and pro-democracy organizations in the Kingdom rejected the process and the up-coming report. This was partly a result of the fact that the chairman of the commission told a gathering at the royal *kraal* that their investigations had demonstrated that the people were satisfied with the existing system. His deputies added, for good measure, that the king's powers would be enlarged and that the country did not want trade unions. In December 2001, the king announced the formation of a Constitutional Drafting Committee to work on a final draft by the end of 2003.

During February 2002, Mswati's revocation of the decree on 'enlarged royal powers' gave rise to speculation that the new constitution might include a number of more liberal provisions. However, these hopes were dealt a severe blow by the introduction of the Internal Security Act in June 2002, which stipulated harsh penalties for anyone participating in or organizing political demonstrations, as well as further restricted labour union activity.

The Constitutional Drafting Committee did in two years what the original commission had failed to do in five. Commissioners consulted legal and social experts, and traveled to Britain to study its parliamentary monarchical system, which King Sobhuza had rejected in 1973. The draft constitution now under discussion would have pleased the late King Sobhuza because it ensures that political power remains centered in the monarchy. It does this by guaranteeing that the Swazi king remains the head of the executive, and responsible for the appointment of the prime minister, the cabinet, chiefs and judges. In addition, no bill passed by parliament becomes law without the king's approval. The new draft constitution will also see the re-establishment of the traditional post of an 'authorized person', who would assume executive duties if the king should die or become incapacitated.

However, it reverses centuries of Swazi cultural precedent in two important ways:

It removes the king's ability to rule by decree; the Court of Appeal is replaced by a Supreme Court (to become the Kingdom's highest judicial body); and

It lifts Swazi women out of their legal minority status; recognizes that chiefs can no longer function in isolation; and acknowledges that in modern society, groups such as the disabled and children require special attention.

Although the draft constitution is being called the 'ultimate law of the land', and a 'new political dispensation for Swaziland', it does not fundamentally change the current absolutist status quo. The Swazi king remains above the law, not subject to parliamentary legislation and with the power to dissolve parliament at any time. The draft constitution allows the king to appoint 20 members of the 30-member Senate. On a more positive note

however, eight of these members must be women. The other 10 members, five of whom must also be women, are then appointed by a lower House of Assembly of 76 members: 60 popularly elected, 10 appointed by the king, and six special women members.

The king remains head of the army, police force and prison system. Perhaps more sinisterly, while political parties are not mentioned in the draft constitution, “freedom of assembly and association” is guaranteed in chapter four, entitled Protection and Promotion of Fundamental Rights and Freedoms.

Nevertheless, in the absence of an internally based legal political opposition, the Swaziland Federation of Trade Unions (SFTU) has led the call for reform from within. However, the recent failure of the SFTU to organize successful mass action in Swaziland has raised serious doubts about the capacity and the support base of progressive movements in that country. Most political analysts believe that the influence of progressive forces is far greater outside the country; a consequence of the repression and intolerance that has informed the monarchy’s interaction with progressive forces. Even though the need for reform is quite evident, and tensions continue to simmer under the surface, progressive movements find that opportunities to express their discontent have become few and far between, especially as the palace increases its crack down on opposition elements in society. For example, it has recently emerged that most pro-democracy movements in Swaziland have decided not to participate in the October 2003 parliamentary elections. These organizations believe that their participation would

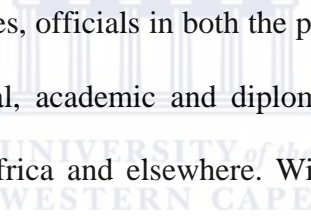


validate the new draft constitution which they have rejected since the process began in 1996. Obed Dlamini, a former prime minister who is now president of the banned NNLC, has described the constitutional draft process as “shameful”, stating that his party would reject the result ([www.iss.co.za](http://www.iss.co.za)).

Reform of the judicial system is also particularly important, because of constant interference by the monarchy. Recently, the government refused to abide by court decisions, prompting the resignation of the Court of Appeal’s judges on 30 November 2002 and the forced resignation of the Chief Justice of the High Court, whose independent-minded rulings have riled the palace. And, despite widespread condemnation, the government refused to reverse its position. Following a fact-finding mission to Swaziland in January 2003, the International Commission of Jurists, Centre for the Independence of Judges and Lawyers (ICJ/CIJL), has released a report noting that although the draft constitution was a step towards the resolution of the “rule of law” crisis that has paralysed jurisprudence in the kingdom, it was not the final solution. In fact, the report argued that “threats to judicial independence, in violation of international human rights standards, are deeply rooted and routine in Swaziland”. It also concluded that “periodic attacks on the judiciary by the executive reveal an executive attitude that holds the judiciary, the rule of law, and the separation of powers in virtual contempt, in particular when they conflict with entrenched interests.” ([www.iss.co.za](http://www.iss.co.za))

In short, the draft constitution provides Swazi citizens with a sound basis to begin dialogue about the type of political system that would be best suited to the social and

political conditions that obtain in that country. Particularly encouraging is the fact that the king's ability to rule by decree is absent. However, it has been argued by constitutional lawyers that if no mechanisms exist for justifiability of a constitution, the rights and freedoms contained in such a constitution may be rendered useless. Therefore, a strong need exists for the creation and strengthening of institutions that will assist in upholding the rule of law and will broaden democratic practices in the "participatory based system" that many Swazi citizens aspire to. If this is not guaranteed, one cannot help wondering whether Swaziland's future will look just like its past.



Over the last several decades, officials in both the public and private sectors have applied economic, military, cultural, academic and diplomatic tools to promote the spread of democratic pluralism in Africa and elsewhere. With the fall of Africa's most resilient tyrant, Mobutu Sese Seko, there is hope that even one of Africa's most troubled systems maybe transformed into a state that reflects the will of the people and promotes the common good. With the exception of countries such as South Africa and Botswana, even the most tenuous democratic progress in Africa is often slowed, blocked or reversed (Yoder, 1998, p.483).

Yoder further states that blame for the above state of affairs in Africa has been leveled against the African political elite, the burden of colonialism, or international political and economic pressures. The study of political culture in Africa is made difficult by the fact

that a remarkably varied mosaic of competing civic groups and ideologies characterizes political life in Africa. Naomi Chazan writes that instead of an identifiable political culture in any African nation there is a 'profusion of political outlooks and worldviews' (Naomi Chazan, 1994). These are partly derived from pre-colonial perspectives and institutions, partly from colonial structures and the struggle for independence, and partly from the efforts to build or resist the post-colonial state.

A common mistake African rulers make is ignoring the values, beliefs and attitudes of the rural masses. These usually constitute more than half of the population of most African countries, Swaziland inclusive. Diamond asserts that 'to ignore the beliefs of the wider society is to fail to appreciate the considerable degree to which influence and pressure for action may flow from the bottom up, constraining elites and perhaps vitiating or undermining even their sincerely democratic inclinations.' 'Stable democracy' according to Diamond, 'requires a mass habituation to democratic values and orientations' (Bourdieu, 1997; p 52-3). Yoder emphasizes that the perspectives of the people can lead them to provide or withdraw support for new democracies and prevent or hasten their erosion over time. Attitudes such as patience and trust allow decision makers more latitude to negotiate difficult economic and social challenges, low levels of travail, and a uniformed or unduly self-seeking citizenry can allow politicians to misappropriate scarce resources and to escape critical evaluation.

Successful democracy generally tolerates a balance between leaders serving in response to a social contract of all the people and leaders claiming the right to political power

because of their superior status conferred by personal charisma or family tradition. But, in the absence of other robust restraints on a ruler's power, ambitious African leaders can easily manipulate the tension between social contract and unequal status to their advantage. Proclaiming that their heritage or extra ordinary personal character gives them a permanent right to incumbency, they often reduce the social contract to meaningless symbolism and relegate the consent of the people to ritualistic expressions of support, (Yoder, 1998,p.502).

The SADC Regional Development Report of 1998 defines the concept of governance in relation to the historical context and experiences of the countries of the SADC region. Governance in one form or another has existed in Southern Africa from the dawn of history. During the 20<sup>th</sup> century, the quest for better governance has been linked to long drawn-out mass struggles for emancipation from oppressive regimes in the region.

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### **Statement of the Problem**

Swaziland has been under severe scrutiny and pressure for constitutional reform from the international community. Non-governmental organizations, donors, countries of the north, have been calling for the small country to democratize its government institutions. There are apparently problems in the way the country is governed. These emanate from the fact that for the past three decades, the country has been without a constitution. More importantly, the co-existence of the traditional political structure and the modern political structure is problematic. This is in the sense that the latter may make decisions only to be

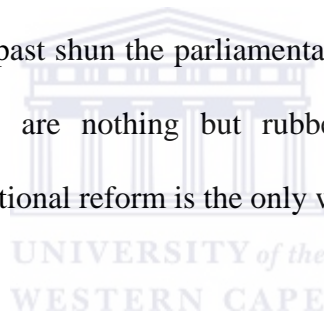
revoked by the traditionalists. The influence of the Monarch makes it almost frustrating for those elected by the people to operate.

The country is currently facing a judicial crisis. People who otherwise should be out on bail are languishing in jail. We have recently witnessed an exodus of judges who stated their dissatisfaction over the *status quo*. People's rights are violated and the hearing of cases is moving at a snail pace. There is currently no court of appeal and people are increasingly taking the law into their own hands. In some cases the law has not been taken into consideration. Some very influential people's cases are mysteriously dropped. They are never prosecuted and these are some of the things Swazis are subjected to. They may talk but at the end of the day the decision by the monarch is final.

Swaziland is one of the countries most affected by the HIV/AIDS epidemic. We are as a nation faced with currently one of the most deadly diseases, robbing us mostly of our energetic skilled people. Monies are being used to cater for luxuries of the few elite at the expense of the poor majority. Such could be used to purchase medicines or build special homes for the sick. This has been exacerbated by lack of accountability and transparency on the disbursement of public funds. People argue that if we were a democratic state, few of these would be witnessed. Government officials would be accountable to the people who voted for them into power.

In essence therefore, the exercise of authority by the traditional political hierarchy often according to tradition or status criteria has tended to isolate individuals and small

grouped from wider arenas of association in Swaziland. Also, the relatively weak state capacity of the modern political hierarchy has failed to counter the dominance of the traditional political hierarchy, namely, to supervise the whole Swazi social fabric, especially at the geographic and economic margins. The system of governance in Swaziland tends to benefit a few at the expense of the majority. The democratic power we exercise when voting for the legislature tends to be questionable when they no longer serve the majority but the elite. This situation therefore gives rise to discontent, subsequently the need for constitutional reform. This is more so because when voting for the legislature Swazis believe that the legislature would be a vehicle for change where desired and when it no longer is the case, dissatisfaction becomes the order of the day. Some Swazis have in the past shun the parliamentary elections basing their argument on the fact that legislatures are nothing but rubberstamps in the current system of governance, and a constitutional reform is the only way out of this situation.



### **Objectives of the Study**

The objectives of the study were: -

- To examine certain provisions of the Draft Constitution and problems in their implementation against the dual system of government in Swaziland.
- To examine and explain the significance of Swaziland's history on the system of government; and
- To discuss the problems brought about by the dual system of government in Swaziland.

### **Research Methodology**

The sensitivity of the research/topic made interviews with the relevant people extremely difficult. However, the study was made possible through documents that were the most used in obtaining information. These were in the form of books, journals, government documents as well as the Internet. Face to face as well as telephone interviews were conducted with university lecturers from the law and administration departments, journalists, and ordinary Swazi citizens, who are also advocating for democratic change in the country. Some people were however reluctant to comment citing fear because of the sensitivity of the topic thus the heavy reliance on literature review and policy documents. These were mostly individuals from the rural areas especially on the subject of the monarchy and who strongly support the status quo.

It proved to be difficult to interview members of the Constitutional Review Commission as they always referred the candidate to the chairman of the commission. The chairman was always reported to be out of office. It later transpired that the chairman was unwilling to comment on any issue relating to the work of the commission.

### **Significance of the Study**

We hope that this study will shed some light on the current political *status quo*, how it deprives us of certain things 'enjoyed' by other small African developing states, as well



as the problems we encounter because of the dual system of government. Presently, the image of the country has been severely tarnished by domestic and international media reports. These reports hit the nail on the head about the way the people are governed and the democratic situation. These reports are not always true but most of the time they reflect what is on the ground. Recent reports (March 2004) have revealed that the country is world number one with the infection rate of HIV/AIDS. Donors have begun to be skeptical in lending a hand to Swaziland. The country has been threatened of being sanctioned and uprooted from certain privileges such as the African Growth Opportunity Act (AGOA). All this can be safely attributed to the governance and democratic issues in the country. Investor confidence has been eroded with what is going on currently in the country. A small and still developing country like Swaziland does not need all this. As a country we need investors coming in with companies and curb the already escalating unemployment rate. The country needs to revisit its governing structures and create a stable political climate. The onus is therefore on all Swazis to stick together and try to normalize the current situation.

### **Definition of Major Terms**

**Democracy**-a system of government by all the people of a country, usually through representatives, whom they elect, thought of as allowing freedom of speech, religion and political opinion.

**Ngwenyama**- it means a lion and is used to refer to the King.

**Ndlovukazi**-term that means lady elephant used to refer to the Queen Mother

**Inkhundla**- a constituency of chiefdoms under a particular center.

**Bucopho**- council of representatives of chiefdoms under an Inkhundla.

### **Structure of the Study**

The study is organised into five chapters. Chapter one comprises of the introduction, statement of the problem, literature review, objectives of the study, methodology, significance of the study, and definitions of major terms.

Chapter two focuses on the existence of the two-parallel systems of government and the problems that they create in the running of the Kingdom. Chapter three discusses the two structures of government, that is, the traditional and modern government.

Chapter four focuses on the dynamics of democratization process and its results so far.

Chapter five concludes the study and offers a way forward for the Kingdom.

## CHAPTER TWO

### THE DUAL SYSTEM OF GOVERNMENT IN SWAZILAND

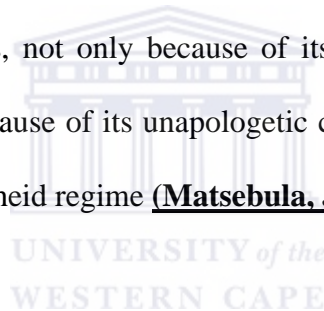
This chapter provides a historical background of Swaziland. The topics covered include a brief history, the 1973 Decree, and the system of governance. The discussion also revolves around the traditional political hierarchy, the modern political hierarchy, and local government.

#### Historical Overview

Swaziland is one of the smallest African states and the world's last absolute monarchy. She achieved central administration in 1840, when groups of very different origins joined to form a nation, following a split from the main Zulu tribe. In 1886, Swaziland formally became a British Protectorate. When Britain decided to accelerate the decolonization process in the region, Swaziland was granted internal autonomy in 1967 and Independence the following year. The Kingdom of Swaziland became a sovereign State on September 6, 1968. But the coming of the Independence did not mean a sudden change of name for the small but potentially rich country.

According to Kuper (1968), Britain in 1902 reluctantly took over Swaziland as an added liability of a bitter military victory. The then King – Bhunu - died during the war and his mother and younger brother acted as regents. The Swazi anticipated that the British

would restore their sovereign rights and expel the troublesome concessionaries, but these hopes were soon shattered. The Swazi over time realized that the Whites were a vital part of their country. It was realized by the Swazi government that before any political developments took place, it was essential to restore the concession issue. The Boers tricked King Mbandzeni into exchanging huge portions of land in return for petty gifts. A commission was appointed to proclaim one third of every land concession to be set aside for the sole exclusive use of the Swazi and that two thirds remain with the White concessionaries. A Swazi fund was established to buy back the land. Towns like Piet-Retief, Ermelo, Barberton, Nelspruit, and their surrounding areas in South Africa were once part of Swaziland. Often Swaziland was mistaken for one of the now infamous South African Homelands, not only because of its geographical size and proximity to South Africa, but also because of its unapologetic close military, economic and political cooperation with the apartheid regime (**Matsebula, J., [www.greenleft.org](http://www.greenleft.org)**).



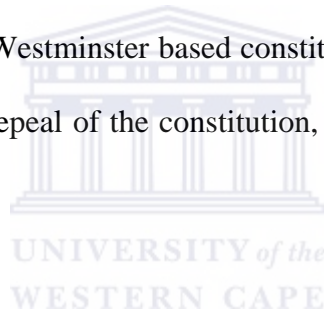
King Ngwane 11 is argued to be of special importance in the history of the Swazis, as it is he who gave the nation one of its names-KaNgwane. This was in about 1750, and we could almost date the history of Swaziland from that date. The name KaNgwane has remained to the present time, and it is one by which the Swazi people usually call themselves.

The Swazi tradition provides that the King and his mother must reign together over their people. In essence therefore, there must always be two royal headquarters or residences. The King's residence is the administrative headquarters. This is where he carries out his

day-to-day business. Its importance remains as long as the King lives. After his death such importance immediately ceases whilst that of his mother continues until a new King is installed. The Queen Mother's residence is the national capital and the spiritual and ceremonial home of the nation. It is where all-important national events take place. All royal residences have administrative officers who are in charge of these residences (Kuper, 1968).

### **The 1973 Decree and the Revocation of the Constitution**

Five years after Independence King Sobhuza 11, with the approval of the traditional government, revoked the Westminster based constitution that was imposed on Swaziland by the British. With this repeal of the constitution, political participation and expression were banned.



In its place, Swaziland sought to design a political system that would safeguard the traditional political system while preparing the nation to work within a more universal governmental structure. That system, known as the Tinkhundla, provides for the election of parliamentary representatives by the people organized into constituencies with the traditional government playing a balancing role where the King and Queen retain political power.

Political activity intensified in the early 1960s. Several political parties formed, and jostled for independence and economic development. The largely urban parties had few

ties to the rural areas, where the majority of Swazis lived. The traditional Swazi leaders, including Sobhuza 11, and his council formed the Imbokodvo National Movement (INM), a political group that capitalized on its close identification with the traditional Swazi way of life.

Responding to pressure for political reform, the colonial government scheduled an election in mid 1964 for the first legislative council in which the Swazis would participate. In the election the INM won all twenty-four seats. Having solidified its political base, it incorporated many demands of the more radical parties, especially that of immediate Independence. In 1966, the United Kingdom government agreed to discuss a new constitution. A constitutional committee agreed to a constitutional Monarchy for Swaziland, with self-government to follow parliamentary elections in 1967 ([www.worldover.com/history/swaziland](http://www.worldover.com/history/swaziland)).

Swaziland's first Independence elections were held in May 1972. The INM received about 75% of the vote. The Ngwane National Liberatory Congress (NNLC) received slightly more than 2% of the votes and 3 seats in parliament. In response to the NNLC votes, King Sobhuza repealed the 1968 constitution on April 12, 1973, and dissolved parliament ([www.worldover.com](http://www.worldover.com)).

The election of the NNLC members to Parliament was seen as a direct challenge to the ruling alliance, and an "insult" to the King. The governing party, in effect the INM, refused to accept the NNLC members into Parliament and a number of crude political

maneuvers were made to exclude them. When the Swazi High Court finally ruled these unconstitutional in 1973, the dominance and legitimacy of the Monarchy was perceived to be under challenge. It is then that Sobhuza 11 declared a State of Emergency and dissolved political parties as well as trade unions. He ruled by decree from 1973 to 1978.

The Swaziland National Union of Teachers was banned outright. Out of the nine registered trade unions in existence in 1970, only the Bank Worker's Union survived at the time of Sobhuza's death in 1982. Other repressive measures were introduced, including detention without trial. He justified his actions as having removed alien and divisive political practices incompatible with the Swazi way of life. In January 1979, a new parliament was convened, chosen partly through indirect elections and partly through direct appointment by the King ([www.worldover.com](http://www.worldover.com)).

The 1973 proclamation stated that the existing constitution has failed to provide machinery for the maintenance of peace and order but was a cause of growing unrest, permitting the importation of foreign politics. The proclamation read as follows:

Now therefore, I Sobhuza 11, King of Swaziland, hereby declare that in collaboration with my cabinet ministers, and supported by the whole nation, I have assumed supreme power in the Kingdom of Swaziland. All legislative, executive, and judicial powers are vested in myself, and shall for the meantime be exercised in collaboration with a council constituted by my cabinet ministers. To ensure the continued maintenance of pace, order and good government, my armed forces, in conjunction with the Royal Swaziland Police Force, have been posted in all strategic places, and have taken charge of all government places and all public services (Sobhuza 11. King of Swaziland, April 12 1973).



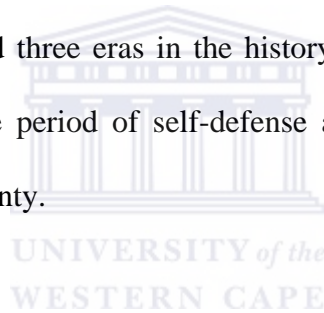
In 1978 the King considered the situation sufficiently under control to introduce a new Constitution, described as a mixture of Swazi tradition and Western democracy. This new constitutional structure contained a number of important institutions- parliament, the cabinet, the Libandla, the Liqoqo, and the Monarchy. Under this system, parliament was 'elected' through the traditional structures known as the Tinkhundla in such a way that it was entirely nominated by the King. The Prime Minister and Cabinet were appointed by the Monarchy from amongst the Members of Parliament.

Under this constitution, parliament and cabinet were not real centers of political power. The Cabinet of Ministers was said to be effectively an administrative body that ran the civil service, and oversaw the implementation of policies decided upon by the Monarch. As a handpicked body of traditionalists, parliament was intended to legitimize the decisions of the monarchy. Criticism in parliament was intended to be directed only at the administrative structures rather than the real policy making institutions. Real power remained, and still remains in the hands of the Monarch.

Davies et.al. (1985) state that the Liqoqo functioned as the executive of the Swazi National Council (SNC) composed of all chiefs and members of the royal family. The SNC seldom met and functioned largely to ratify decisions already made by the Monarch. Exclusively the King and elders appointed the Liqoqo and its membership was secret. Both the Monarchy and the Liqoqo are the real policy makers in Swaziland and thus real politics were confined to these royalist institutions.

They continue to argue that through such as institutional structure, the governing royalist and a section of the petty bourgeoisie maintained control over the Swazi state. Nothing resembled a popular group opposed to their rule emerged after the banning of the NNLC and trade unions, However, the ruling royalist alliance was confronted with contradictions and such a political power struggle was essentially for personal positions. Sobhuza 11 was aware of such politicization, but he maintained it. After his death the conflict burst open and began to undermine the institutional structure he ad carefully built.

King Sobhuza 11 died in August 1982, and Queen Regent Dzeliwe assumed the duties as Head of State. This ended three eras in the history of Swaziland the unification of the clans into one nation, the period of self-defense against concession-mongers, and the struggle to regain sovereignty.



In 1983, an internal dispute led to the replacement of Dzeliwe by new Queen Regent Ntombi. Ntombi's son, Prince Makhosetive (now King Mswati 111) was named heir to the throne. At this time power was concentrated in the Liqoqo, a traditional advisory body that claimed to give binding advice to the Queen Regent. In October 1985, Queen Regent Ntombi demonstrated her power by dismissing the leading figures of the Liqoqo. Prince Makhosetive returned from school in England to ascend the throne and help the continuing internal disputes. He was enthroned as Mswati 111 on April 19 1986. Shortly afterwards he abolished the Liqoqo.

## **The Traditional Political Hierarchy**

At the apex of the political hierarchy are the King and his mother, each with a hereditary title and special insignia of office, each with political power sanctioned on the familiar African pattern by ritual and belief. Administratively, the Monarchs combined the functions divided in Western countries into legislative, executive, and judicial.

The King inherits his position in the man line. He is chosen from among the sons of his father by virtue of his mother's rank. When fully installed, he is given the title of *Ngwenyama* (lion) and his mother the title of *Indlovukati* (lady elephant). The King and his mother hold positions of unique privilege and authority. They are the central figures of all national activities; they preside over the highest courts, summon national gatherings, allocate land, and disburse national wealth.

Between the two, there is a delicate balance of legal, economic, and ritual powers. The King presides over the highest courts, and in the past he alone could pronounce the death sentence. The Queen is in charge of the second highest courts. The King controls the entire army but the commander-in-chief may reside at the Queen mother's village. The King has the power to contribute land and together they work the rain. She may rebuke him if he wastes national wealth.

Political conflict between the two rulers is a menace to the entire nation. For example, in the reigns of Mbandzeni, led to civil war. Drought and flood have sometimes been attributed to bad feelings or bitterness between the King and his mother. In essence therefore, the administration of the entire country requires their harmonious co-operation. It is considered difficult to maintain law and order if the rulers ignore their obligations towards each other.

Kuper (1980) states that in order to lessen friction, Swazis formulated certain rules of behaviour. Because of personality differences, antagonism is appreciated in a society built essentially on a close personal, kinship basis. Swazis have therefore ruled a King has no full brothers. This prevents a woman from encouraging a favoured younger son to usurp the birthright of the older one.

The separation of the villages and his mother also minimizes potential conflict. Diplomatic intermediaries are sent to and fro, and are useful in situations in which friction might be engendered or aggravated by face-to-face talks. The extent to which co-operation between the King and the Queen mother is harmonious, depends on the conditions of the times and on personal qualities. In the past when both rulers were illiterate, and the nation was more homogeneous, the duties were more evenly shared between the two. Presently, the educated Mswati 111 shoulders most of the administrative responsibilities and the balance of power is more in his hands.

However, Kuper (1980) says that the Queen mother must be kept informed of the activities of her son's government. She is a full member of the government and may take part in discussions of matters of state policy in the Swazi National Council whenever it is deemed necessary. The King consults invariably his mother before taking action in any important matter. The Queen mother has a particularly important function in that when her son is intractable to the wishes of the SNC, its members will approach her and beg her to reason with him. She often succeeds where they have failed. The King must show respect to his mother, and if he fails to do so, he is fined.

### **The Princes and Princesses**

These are the first generation of the King's descendants. The King relies a great deal on the support of members of lineage. His close relatives, particularly his half brothers and uncles, wield great influence. The senior princes are consulted on all important issues; they together with other counselors, are the King's advisors and teachers, as well as most of his fearless critics (Kuper, 1980).

Princes are sent to act as shadows; to report important events, and to investigate rumours of treason, among others. They are expected to keep alive the prestige of royalty by generosity to commoners and attribute to the central rulers (Kuper, 1980). But the bond of blood also makes princes rivals of the King. They are princes, they are powerful, but they must not be his equals in rituals, wealth or prestige. That is the reason the King has no full brothers.

Important princes are never expected to settle too near the King lest they usurp his powers and interfere his personality by ritual. No close brother may live permanently at the capital. Swazis consider the best way to avoid trouble between princes and King is to grant them limited power over local units and such positions may be hereditary. If the King sends a prince to take over a principality, the former ruler remains in the area and becomes counselor to the prince. A King does not necessarily remove non-relatives to give princes their opportunity. Hereditary chiefs of other clans are as secure as Dlaminis. Those who get demoted are those who displease the King or are troublesome, for example, in plotting against the King.

The female relatives are politico-economic assets to be judiciously invested (Kuper, 1980). The more important princesses are given as wives to foreign rulers. In this way they link the King with important people. An example was princess Mantfombi who was given to King Zwide by Sobhuza 11so Zwide would cease attacking him. Indeed, he stopped. In Mswati's era, princesses are choosing their own sweethearts without interference from the Monarchy. Senior princesses on marriage live away from the capital, take little part in the central government.

### **The Swazi National Council**

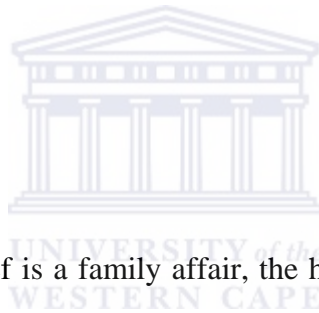
It is comprised of twenty-two members (chiefs and commoners) who all report to the King. It is believed to be composed of the wisest men of the nation. Appointment is not hereditary and members are chosen by the King-in-council. The principal qualifications are ability, interest, and general social standing. For convenience, the council is limited in number. No public announcement is made of any new member, and members who die are not replaced. The SNC is largely informal and the King may summon any member whom he desires to consult. Only when an important decision on policy is necessary does he call the full council. When the King travels a few travel with him in his entourage.

The council is a strong factor in government, and the handling of matters by it is always confidential. No other person may be admitted to its deliberations, save for the King's personal attendant who however does not take part in the debates. As soon as the resolutions of the SNC are arrived at, they seek an interview with the King, which is always granted. All matters are then thoroughly discussed between the council and the King. The King does not look upon the SNC as merely a council, vested with powers as are customary, but as elders of the nation. They are a sort of a vigilance committee which must keep him informed of public opinion and of other happenings, and must remind him of matters which need consideration and attention.



The SNC has a certain amount of executive powers but its functions are neither specialized nor precise. It may make decisions and execute them. It sometimes revokes decisions taken by the government and has the powers to summon the Prime Minister and Cabinet Ministers. In 2001, the Minister for Public Service and Information reinstated over fifteen members of the Swaziland Television Authority (STVA) who were unfairly dismissed. He was summoned and told to reverse his decision. The workers took the matter to court and won. It is believed that the SNC was behind this because some four members of the workers belonged to progressive groups. Government was ordered by the court to pay them as well as to reinstate them. Such goes to show how powerful the SNC is.

### **The Chiefs**



The appointment of a chief is a family affair, the heir to a deceased chief. He/she is the head of the area in law, economics, and ritual. He/she mediates between his/her subjects and the rulers; presides over cases that family councils could not settle; sanctions fines and other punishments inflicted by his/her court; investigates serious cases before sending them on appeal; exercises rights over land and in brief reflects in miniature the privileges and duties of the King of the nation. His/her mother shares with him/her the responsibility of control and is in charge of the main section of the homestead (Kuper, 1980).

Each chief has at least one headman to attend to cases, supervise labour, and represents the claims of subjects. In one principality, there may be as many as three headmen, each with specific duties. No chief possesses autocratic powers within his/her principality. If councilors see that the chief has seriously infringed the rights of subjects, they fine him/her without hesitation. If a chief does not accept the advice of the councilors, he/she may always appeal to the central authorities, who will, if they consider necessary, order him/her 'to rest' and appoint another member of the area to act in his/her place until the installation of another one (Kuper, 1980).

## **The Modern Political Hierarchy**

### **The Executive**

The King and the Queen mother are at the apex of the modern system of governance as well. The Prime Minister is the head of government and exercises executive authority. Since 1967 the Prime Minister has always been a Dlamini and male. The Deputy Prime Minister has never been a Dlamini. The King at the recommendation of the Prime Minister appoints the cabinet. It is composed of fourteen ministers. These are the Ministry of Agriculture and Cooperatives; Economic Planning and Development; Education; Enterprise and Employment; Finance; Foreign Affairs and Trade; Health and Social Welfare; Home Affairs; Housing and Urban Development; Justice and Constitutional Affairs; Public Service and Information; Natural Resource and Energy; Tourism, Environment and Energy; and Public Works and Transport. Of the fourteen Cabinet Ministers, there are only two females. Such goes to prove the gender imbalances existing in the country not only within government, but also in the private sector.

### **The Legislature**

A bi-cameral legislature has existed since 1967. The House of Assembly consists of sixty-five members. The public, through secret ballot elections, elects fifty-five and the King appoints ten additional members. The House of Senate consists of thirty members. The elected members of parliament select ten senators and the King appoints twenty. The total number of parliamentarians is ninety-five. Currently, there are ten females, three elected, one selected and six appointed by the King.

The legislature in Swaziland is not totally independent of the executive. The legislature does not have real control over the national budget, as its role is restricted only to approving the budget drafted by the executive branch. The vesting of enormous powers in the Head of State makes it difficult to make him accountable for his actions. In fact, it is unthinkable to challenge their majesties as blame is always put on those who advise them and the government.

### **The Judiciary**

Swaziland's judiciary comprises traditional Swazi National courts, which administer Swazi law and custom, as well as constitutional courts, which practice Roman Dutch, law. The latter are made up of a High Court, various Magistrates Courts and an Industrial Court, which are headed by a chief Justice under whom fall judges, and magistrates. The constitutional courts have the final ruling in the event of any dissension between the two legal systems.

A dual court system of traditional courts under chiefs and a Roman-Dutch system comprising of magistrate courts, High court, and the Court of Appeal exist. The judiciary has not escaped the tentacles of the Head of State even though it is supposed to be a bulwark of defense of human rights. Their Majesties, who also have powers to dismiss them, appoint judges. The executive also determines their conditions of service, and the judiciary lacks financial autonomy. Often, politicians using the King and Queen mother's names subject judges to intimidation.

### **Local Government**

Although there are special-purpose local government bodies, more important are those that carry out a broad range of public activities within a defined area and population. Almost all local government bodies share certain characteristics: a continuing organization; the authority to undertake public activities; the ability to collect taxes and determine a budget; the ability to enter into contracts; and the right to sue and be sued. In Swaziland, local government is nevertheless a mere appendage of central government ([www.sntc.org.sz](http://www.sntc.org.sz)).

The department of Urban Government within the Ministry of Housing and Urban Development has improved the delivery of government services in urban areas. The department has been able to develop appropriate local government institutions that are responsive to the needs of the people at the local level. A process of stimulating citizen's

participation in local development, enhancing a sense of belonging and promoting a sense of belonging was undertaken by the ministry. The institutionalization of the local government electoral process has afforded the opportunity for people to elect competent leaders and this has improved policy making, planning, decision making, budgeting and the delivery of services. People now have considerable influence over the type and nature of services that are provided by local authorities. This has improved public participation in policy making on the concept of decentralization and local empowerment.

Local government has improved the wellbeing of the Swazi by decentralizing planning and by taking the most appropriate decisions on local matters. However, local governments in Swaziland have no autonomy especially in financial affairs. They accept grants from the central government and it is in this aspect that they do not have freedom to do their own things. Without financial freedom it is hard for local government to be absolutely independent.

Local government elections like parliamentary elections are such that voting is conducted by secret ballot. However, local government elections normally lack in coverage and publicity. They are seriously ignored due to lack of mobilization and/or inadequate campaigns, which are compounded by absence of support to, by and from the media, as no funds are placed or earmarked for mass education.

## **CHAPTER THREE**

### **THE MAKING OF A CONSTITUTION IN SWAZILAND**

The Draft Constitution is the one instrument right now that if properly used would redeem both the people and the development of Swaziland. Swaziland needs an instrument that would clearly define the roles and the rights of all social partners in Swaziland and the Draft Constitution has to fulfill this need if this nation will not go down the drain.

Through its Preamble, the Draft Constitution gives the overall impression that it intends to bring about a transformation in Swaziland-that it intends to transform Swaziland into a democratic society. It acknowledges that it is necessary to blend the good institutions of traditional law and custom with those of an open and democratic society so as to promote transparency and the social, economic, and cultural development of our nation. This chapter looks into the making of a constitution, the body responsible for putting it together and the provision of the Draft. It also looks at the system of government of Swaziland and the rule of law.

#### **The Domestic and International Pressure for Political Change**

On March 14, 2002 President Bush announced that the United States would increase its core assistance to developing countries by 50% over the next three years, resulting in a \$5 billion annual increase over current levels. This increased assistance went to a new Millennium Challenge Account (MCA) that funds initiatives to improve the economies

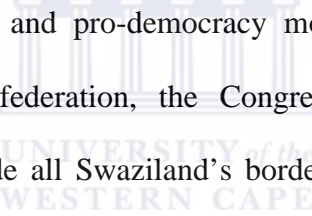
and standards of living in qualified developing countries. The goal of the MCA is to reward sound policy decisions that support economic growth and reduce poverty. The MCA recognizes that economic development assistance can be successful only if it is linked to sound policies in developing countries in countries where poor public policy dominates, aid can harm the very citizens it is meant to help-crowding out private investment and perpetuating failed policies. The funds in the Millennium Challenge Account was to be distributed to developing countries that demonstrated a strong commitment toward:

- Good governance: rooting out corruption, upholding human rights, and adherence to the rule of law are essential conditions for successful development.
- The health and education of their people: investment in education, health care, and immunization provide for healthy and educated citizens who become agents of development.
- Sound economic policies that foster enterprise and entrepreneurship: more open markets, sustainable budget policies, and strong support for individual entrepreneurship unleash the enterprise and creativity for lasting growth and prosperity.

Swaziland failed to make it to those countries that were to benefit from the MCA. It was said that the country's governance is poor. Our major set back was the eviction of people from their land and became exiles in another country. When the then government defied two court orders, it became the last straw. It was also mentioned that unless the country revisit its system of government, we would continue to lose

aid. It was put forward that unless and until we democratize we would be forever sanctioned.

According to African Eye News Service (2000), Swaziland's violent clampdown on pro-democracy activists and its defiance of United States and international union calls for less repressive labour legislation may have cost the country 20,000 jobs promised by investors. Swaziland's Chamber of Commerce and Industry executive secretary confirmed that investors had warned they were holding back on plans for new factories and other ventures because of increasing civil unrest and government's apparent inability to address public concerns.



The Kingdom's union and pro-democracy movement unites with South Africa's largest labour union federation, the Congress of South Africa Trade Unions (COSATU), to blockade all Swaziland's border posts for two days. The economic blockade formed part of a rapidly escalating campaign to force absolute monarch King Mswati 111 into liberalizing the Kingdom's labour laws and repeal the 1973 decree banning political parties.

The South African-based Swaziland Solidarity Network (SSN) and a broad alliance of other banned political parties called for international trade sanctions, while the international Labour Organization threatened to lobby against the Kingdom too unless reforms were forthcoming. The growing protest saw the eighty one thousand member umbrella Swaziland Federation of Trade Unions (SFTU) and its twenty one affiliates



strike illegally for two days in 2000. The stay away was eventually broken when the police arrested key labour and political leaders. The turmoil, and growing anti-monarchist sentiments across the border in South Africa, is set to hit Swaziland's already ailing economy at the worst possible time. The Internal Security Bill of 2002 began to attract national and international outrage weeks after it was announced. The Bill, which retrenches the government's repressive stranglehold on the democratic opposition, appears to have already come into force before going through the official rubber-stamping procedures.

The United States of America issued an official condemnation of the Bill, claiming it was against its position on human rights. This raised the prospect of further action, especially if the coming Constitution does not meet the country's various treaty obligations. The United States stated that it is closely following the development leading up to the publication of the Constitution. In 2002, it was said that if the government of Swaziland is not seen to be carrying out democratic reform, the country would lose its trading privileges under the African Growth and Opportunities Act (AGOA), which gives countries free access to vital United States markets.

The Swaziland Solidarity Campaign was calling on the Western and African governments to target sanctions on members of the regime, including freezing the foreign bank assets of King Mswati. They believed that this was more likely to convince the government to change its policies than sanctions and trade restrictions, which will punish the wider population.

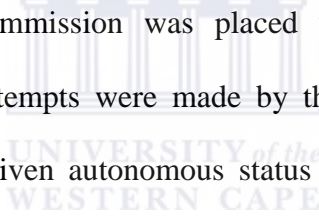
The Swaziland Democratic Alliance (SDA), a reformist umbrella organization, has called upon the international community to isolate Swaziland economically and diplomatically until King Mswati agrees to be a constitutional monarch within a democratic system. In 2003, when a royal decree made government officials invulnerable to legal challenges and circumscribed the activities of labour unions, the International Labour Organization called for economic sanctions against Swaziland. But within a month, King Mswati revoked the decree, and there's been not talk of sanctions since. These are among the many threats and sanctions imposed on Swaziland for the main reason of democratization. We shall continue to lose a lot of aid just because we are failing to choose the path of democratization.



### **The Appointment of the Constitutional Review Commission**

In August 1996, the King appointed a Constitutional Review Commission (CRC) by decree No.2 of 1996, which was supposed to be a vehicle for democratic change. The terms and conditions for the Commissioners were not so good for the twenty-five member Commission. Some Commissioners resigned specifically because of the poor conditions of service. Those who remained in the Commission did so out of their respect and loyalty to the King. The government failed to appreciate that some of the Commissioners were businessmen and businesswomen, lawyers and doctors who had to abandon their businesses because of the national assignment.

This CRC was given two years in which to complete its task. However, this period proved to be very short and an extension was sought and for a further period of two years. The reasons for the extension were chieftaincy disputes that hindered the progress particularly during the stages of the civic education and the collection of public submissions. Also, during the early stages of collecting submissions, each regional team had one set of audio and visual equipment, which meant that only one person could be interviewed at a time. It was only in the middle of the third stage that more equipment was purchased. This meant that two people could be interviewed at the same time in any of the four regions. Again in February 1998, it was announced that there would be national elections in October 1998.



On appointment, the Commission was placed under the Ministry of Justice and Constitutional Affairs. Attempts were made by the Commissioners immediately after their appointment to be given autonomous status and independence from government control but the government strenuously resisted this move. The Commission feared that government bureaucracy would delay and frustrate the progress of the project. The government on the other hand decided that the Commission could only have operational autonomy and not financial autonomy. The Ministry of Justice was to handle all financial matters of the Commission including the budget. In essence, the government was the facilitator of the project. The government provided the Commission with a secretariat to assist it accomplish its objective as laid down in their terms of reference.

The CRC spent five years assembling what it claimed were the views of ordinary Swazis regarding the type of government they wanted. As stated above, pro-democracy forces were not permitted to contribute their ideas to the CRC. Press coverage of individual submissions was banned. Neither has the record of these submissions been released, nor has there been an accounting of how many Swazis presented their views or what they said to the CRC.

### **The CRC Terms of Reference**

The Constitutional Review Commission Decree No.2 of 1996 sets out explicitly the functions of the Commission. Section 3(1) provides that, the Commission shall, with the assistance of the Attorney General and other Constitutional experts, draft a new Constitution suitable for the Kingdom of Swaziland. Subsequently, the original mandate was amended and stated to be the writing of a report after the Commission had done the following:

- Compile and document the current Constitutional framework of the country and circulate the same to all Tinkhundla Centres.
- Receive oral submissions, representations and information from members of the general public on the matters covered in its terms of reference and for this purpose visit all Tinkhundla Centres to access such members and
- Receive written submissions representations and information from members of the public on the matters covered in its terms of reference through its address the Secretariat or at Tinkhundla Centres ([www.google.com](http://www.google.com)).

The Commission when discussing its terms of reference, it became apparent that the requires some form of civic education on constitutionalism in general and in particular the Constitutional development in Swaziland; hence it included this phase in its terms of reference.

### **The CRC Composition**

The Commission came from a very wide spectrum of the Swazi society and represented people of all political persuasions and opinions. Members were drawn from political organizations, trade unions, medical doctors, lawyers, civil servants, the private sector, University professors and lecturers, businessmen, Chiefs, Priests, whites, coloureds and indigenous Swazis. Four Commissioners subsequently resigned:

- Nkonzo Hlatshwayo, then a Senior Lecturer in law at the University of Swaziland and Secretary of the Commission. Bhekie Maphalala replaced him as Acting Secretary pending the appointment of a substantive secretary. This was not to be, the Commission finished up work and substantive secretary was ever appointed.
- Mhawu Maziya, then a Senior Lecturer in Law at the University of Swaziland.
- Mario Masuku, the president of the Peoples United Democratic Movement (PUDEMO) one of the political organizations operating illegally in the country.
- Dr. Jerry Gule, a former Lecturer at the University of Swaziland, a former Human Resources Manager of Sappi Usuthu Company and an executive member of the Institute for Democratic Leadership (IDEAL).

Four commissioners died during the process of gathering evidence: -

- Chief Mandlenya Gamedze, a chief and a sugar cane commercial farmer.
- Elias Mahlalela, prominent and successful business-a man who owned factories and a restaurant, to name a few.
- Mndeni Shabalala, a highly experienced and shrewd politician who was active before and after the country's independence. He held several positions in government including that of an Assistant Minister and Indvuna yeTinkhundla.
- Dr. Fannie Friedman, a highly respected Swazi and medical doctor. She worked for government in a number of hospitals around the country. She was involved in non-governmental organizations as well. She also served in Cabinet as the Minister for health for a number of years.

Two other Commissioners, Thomas Stephens and Zombodze Magagula left the Commission allegedly because of work pressure from their business and employment respectively. They left during the first phase of compiling and distributing the 1973 Constitution with an undertaking that they will rejoin the Commission during the fourth and last phase of drafting 'the Constitution'. They did not resign from the Commission but they never kept their promise as well to return to the Commission.

The absence of ten Commissioners who resigned, died or merely disappeared meant more work for the remaining Commissioners with dedication and hard work, those who remained did accomplish the objective for which the Commission had been established beyond expectation. All the Commissioners, upon their appointment took an oath of

allegiance to the Head of State, King Mswati 111 for the due performance of their duties and confidentiality.

While the composition of the Commission was seen to be representing all people from all walks of life, it was met with criticism from the political side. The appointment of the Commission was not democratic, they argued. Activist attorney Kison Shongwe, who was appointed by the King to be on the CRC, was one of the dissenting voices in the CRC. He said he had hoped to represent the voice of reform and democracy. After a few sessions he realized that he was marginalized and was only there as ‘window dressing’ to prove to the world that Swazis of all political persuasions were participating in the CRC’s work. He refused to ‘legitimize the illegitimate’.

The fact is that the CRC was not given a good reception by the people, especially the progressive groups. It remained non-inclusive yet it continued to operate in the presence of state of emergency. Its membership was over loaded with traditionalists, royalists, chiefs and close relatives of the Crown. Out of the thirty-three delegates, there were only four progressives. The terms of reference of this structure were decreed and disallowed group participation and submissions by groups or formations whether political or non-political. Only individuals were expected to submit to this forum. All these attributes of the CRC caused the democratic alliance to disassociate itself from it and to condemn the process as cosmetic and only meant to deceive the international community about political change, and to leave them with illusion that there was a democratic process in place in Swaziland.

An assembly of pro-democracy forces, including human rights lawyers, labour unions and banned political opposition parties, laid the groundwork for an alternative national constitution. These forces argued that they sought an alternative to the royal constitution the palace will issue so it can retain royal rule forever. They were gathered to shed some light of what a new constitution could entail. The Swazi Federation of Trade Unions (SFTU), which has been at the forefront of the struggle to democratize, argued that if there was a genuine intention, the CRC would have been democratically elected in an enabling environment where a Bill of Rights operated, and where freedom of political expression, association and assembly was guaranteed. The union also believed that the reason this structure was put in place was that the Swazi nation realized without hesitation that political change was necessary, and that the system of governance in place did not enjoy the support of the Swazi people, and that there was a need for democratization ([www.cosatu.org.za](http://www.cosatu.org.za)).

### **The CRC Methods of Gathering of Evidence**

The Commission prepared a list of Constitutional topics for the collection of submissions. The topics were taken from the 1973 Proclamation as well as the terms of reference. The topics were, The Head of State, Three Arms of Government, Bill of Rights and Freedoms, Land, Minerals and Natural Resources, Civil Service, Finance, Good Governance, Foreign Relations, Environment, Attorney General, Swazi National Council, Government based on Tinkhundla System, Matters regulated by Law and Custom,



Political Parties, Amendment of the Constitution and any other topic of the personal choice ([www.google.com](http://www.google.com)).

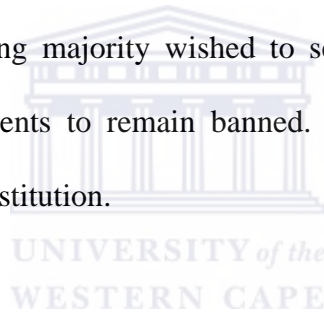
The collection of submissions was done in the chiefdoms. Provision was made to collect submissions at the Industrial areas and higher educational institutions. Any person wishing to make a submission was required to do so in writing or in person and may not represent any one or be represented in any capacity whilst making such submissions to the Commission. It was for this reason that group submissions were not allowed. No member of the public was allowed to listen to another's submissions. Only Swazis were allowed to make submissions and graded tax numbers were used for identification. Each individual was expected to deal with all the topics although a person was not obliged to do so. People were at liberty to make submissions on topics not covered by the prepared list. At the end of each day, the cassettes containing oral submissions as well as the written submissions were locked by locked by the convener and handed over to the police officers for safekeeping.

After the Commission had finished collecting submissions from the four regions, members of the public who could not make submissions in these regions, were given a period of two months to make submissions at the offices of the Commission. This was done to ensure that every Swazi citizen who wished to make submissions to the Commission was not left out. The Commission further received written submissions, from both the resident and overseas Swazi Citizens.

Disabled persons were given an opportunity as well to make submissions in specific designated areas throughout the country. Transport was provided for them to be taken to these centers. They had a choice of making either written or oral submissions like all other Swazis who were submitting to the Commission. Sign language interpreters were provided as well by the Commission to assist those disabled persons who were literate in the sign language.

### **CRC Recommendations**

No documented data was released or circulated on how many Swazis were interviewed or what they said. However, the chairman of the commission reported to His Majesty the King that an overwhelming majority wished to see the king's powers enhanced, and wants his political opponents to remain banned. What transpired afterwards was the process of drafting the constitution.



### **The Nature of the Electoral System**

It is important before discussing the nature of the elections in Swaziland, to note that elections and innovative constitutions are important steps towards good governance, but they do not constitute good governance themselves. It is widely acclaimed that elections are generally not well managed when they occur in SADC countries. The party in government is sometimes alleged to have manipulated the elections and the opposition parties thereafter contest the elections results. Swaziland is not an exception. Although there are no parties, the whole process is argued to be overcome with loopholes.

Deficiencies in voter registration, ineffectiveness of the chief electoral office, allegations of bribery of voters, and vote rigging are some of the frequently given reasons for the non-acceptability of election results by contending candidates.

The Electoral Office Order of 1998 established the Chief Electoral Office. According to Section 4 of the Order, it is responsible for:

- Supervising and conducting elections of the elected members of the House of Assembly at the nominations through to and including primary and secondary level.
- Supervising and conducting elections of headsmen at both primary and secondary level.
- Supervising and conducting elections of Inner councils.
- Conducting civic educations on the electoral process before and after elections.
- Conducting bye-elections of Members of Parliament, Headman, and Inner Council in the event of death, imprisonment or other eventuality.
- Preparing and maintaining a general register of elections.
- Preparing and distributing such material and pamphlets on the electoral process.
- Preparing and submitting a report on the activities of the office during election period.
- Generally administering the provisions of this order.

Elections in Swaziland for parliamentarians are held every five years. Under each Inkhundla (constituency), the people elect their representative. The process begins with

nominations of ten possible candidates in each chiefdom under one Inkhundla and voting is by secret ballot.. The successful candidate then competes with the others from the different chiefdoms to come up with one person to represent an Inkhundla. In all there become forty-five parliamentarians, as there are fifty-five Tinkhundlas.

## **Provisions of the Draft Constitution**

### **Civil and Political Rights**

Civil and political rights include the rights to life, liberty, political participation, freedom of opinion, expression and conscience, and freedom of association. In Swaziland to determine the level and extent to which human rights mentioned above are provided for, one has to go through a few sections of the Bill Of Rights in the Draft Constitution. Section 15, declares that fundamental rights and freedoms of the individual are enshrined in the Constitution and shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs and agencies of Government and, where applicable to them, all natural and legal persons in Swaziland, and shall be enforceable by the courts as provided in the Constitution.

This section is commendable in that it is in tune with international human rights standards in that it recognizes the importance of the Bill of Rights by requiring that all state institutions and other persons, be they natural or legal (e.g., companies) respect its provisions. Section 15 gives the Bill of Rights the status of being the highest law of the land, superseding every other regulation, law, etc, in force.

It is one thing for a constitution to declare through a Bill of Rights the fundamental rights and freedoms that citizens are entitled to enjoy and another question totally whether the people are able in real life to enjoy these rights and freedoms. This concern brings in the question of enforcement, that is, are people able to use the courts in order to enforce these rights and freedoms? Section 36 of the Bill Of Rights says that Swazi citizens may be able to enforce the fundamental rights and freedoms given to them. The question of enforcement brings in the issue of 'standing', that is, the question whether someone who approaches a court is the right person to present the matter to court for decision. Section 36 allows the following to bring cases before court on the basis of the Bill of Rights:

- Anyone acting in their own interest
- Anyone acting on behalf of another person who cannot act in his or her own name, for example, where the affected person is detained.
- Anyone acts as a member of, or in the interest of, a group or class of persons.

By making this provision section 36 represents a commendable attempt in human rights standards in so far as defining 'standing' is concerned. Section 36 however, does not go as far as allowing anyone to act in the public interest of its members to bring a case before a court using a right given under the Bill of Rights.

Section 25 provides for the protection of freedom of expression. This section allows for the freedom of expression and opinion including the freedom of expression and opinion including the freedom of the press and other media. However, section 25(3) introduces limitations to this liberty such as, interests of defiance, public safety, and public order,

preventing the disclosure of information received in confidence. It further provides for the imposition of 'reasonable restrictions' upon public officers.

The Women Resource Centre argued that these limitations appear to be very broad because phrases like 'public safety' are very ambiguous and cast the net of prohibitions very wide. The provision for limitations on public offices is particularly serious because the Bill Of Rights does not provide for the right of access to information. The constitutional right of access to information is based on the idea that people should have access to the information in the possession of the State that has an impact on them. Such includes information the state uses to make decisions affecting someone. Therefore limitations on disclosure of information or access to the same severely affect state accountability. Accountable government is impossible if the government has a monopoly over the information that informs its actions and decisions.

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Thus where the BOR does not provide for the right to access to information and imposes wide limitations on the freedom to expression the creation of an open and democratic society becomes a difficult task. Section 26 of the Draft Constitution provides for the protection of freedom of assembly and association. However, section 26(3) introduces limitations such as interests of defence, public safety, public order and [any limitation] 'that is reasonably required for purpose of protecting the rights or freedoms of other persons'.

The above constitutional limitations are very broad and work against the effective establishment of a democratic society. First, in terms of the protection of the freedom to assemble, limitations are regrettable because such a freedom is essential to the proper functioning of a democracy. Groups are more effective communicators of messages rather than individuals, facilitating the collective voicing of opinions and grievances. Further, assembly is a direct form of democracy that serves as a counterweight to the power given to the government and particularly to political parties by a constitution. The freedom to associate is essential both for attaining democratic reforms and also for maintaining representative democracy.

### **Social and Economic Rights**

The Draft Constitution does not mention the right to health care, the right to food, the right to shelter and the right to clean water and sanitation. This is a serious problem because it indicates the absence of a constitutional solution to the issues raised. Where the Draft Constitution is silent about these crucial rights, Swazis will have no legal basis for requiring government action. It means that in the future Constitution of Swaziland there will be no right to health and therefore no constitutional obligation for government to take all necessary steps, including passing laws in order to provide for health care. Looking at this it is safe to say that the Draft Constitution does not make provision for economic and social rights and that by so doing it lacks an answer to the current problems that are threatening to overcome us as a nation. Therefore, it is important that the Bill of

Rights in the Draft Constitution be amended through the clear and adequate inclusion of economic and social rights.

### **Gender Equality**

Gender relations in Swaziland are not balanced, they tend to favour males over females. Women have always been marginalized and this is largely credited to the Swazi culture. However, the Draft Constitution has tried rectifying this glaring imbalance. Section 21(1) of the Draft Constitution states that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. It further states that a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability. The Draft Constitution defines discrimination as means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.

The Draft Constitution in section 29 is focusing on women and their rights. It states that women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. It further states that subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential



and advancement. A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

### **The Rule of Law and the Courts**

The Judiciary that shall be independent and subject to this constitution shall administer Justice in the name of the Crown the exercise of the judicial power.

### **The Judicial Power of Swaziland**

The judicial power of Swaziland vests in the Judiciary. Accordingly, an organ or agency of the Crown shall not have or be conferred with final judicial power. In the exercise of the judicial power under this Constitution or any other law, the superior courts may, in relation to any matter within their jurisdiction, issue such orders or directions as may be necessary to ensure the enforcement of any judgment, decree or order of those courts.

### **The Judiciary**

The Judiciary consists of Judicature comprising of the Supreme Court and High Court, and such specialized, subordinate and local courts or tribunals as Parliament may by law establish. The Judiciary has jurisdiction in all matters civil and criminal, including matters relating to the Constitution, and such other jurisdiction as may by law be conferred on it. The superior courts are superior courts of record and have the power to

commit for contempt to themselves and all such powers as were vested in a superior court of record immediately before the commencement of the constitution. Except as may otherwise be provided in the Constitution or as may otherwise be ordered by a court in the interest of public morality, public safety, public order or public policy, the proceedings of every court shall be held in public. The Chief Justice is the head of the Judiciary and is responsible for the administration and supervision of the Judiciary (Draft Constitution of Swaziland 2003; p 80).

### **Independence of the Judiciary**

The Judiciary in both its judicial and administrative functions, including financial administration, shall be independent and subject only to this Constitution, and shall not be subject to the control or direction of any person or authority. The Judiciary shall keep its own finances and administer its own affairs, and may deal directly with the Ministry responsible for finance or any other person in relation to its finances or affairs. Neither the Crown nor Parliament nor any person acting under the authority of the Crown or Parliament nor any person whatsoever shall interfere with Judges or judicial officers, or other persons exercising judicial power, in the exercise of their judicial functions. All organs or agencies of the Crown shall give to the courts such assistance as the courts may reasonably require protecting the independence, dignity and effectiveness of the courts under the Constitution. A judge of a superior court or any person exercising judicial power is not liable to any action or suit for any act or omission by that judge or person in the exercise of the judicial power (Draft Constitution 2003;p 81).

## **The Supreme Court**

There shall be a Supreme Court of Judicature for Swaziland consisting of the Chief Justice and not less than four other Justices of the Supreme Court. Not less than three Justices of the Supreme Court shall duly constitute the Supreme Court for its ordinary work. A full bench of the Supreme Court shall consist of five Justices of that Court. The Chief Justice shall preside at sittings of Supreme Court, and when not sitting the most senior of the Justices constituting the court shall preside.

The Supreme Court is the final court of appeal. Accordingly, the Supreme Court has appellate jurisdiction and such other jurisdiction, as may be conferred on it by this constitution or any other law. The Supreme Court has jurisdiction to hear and determine appeals from the High Court of Swaziland and such powers and authority as the Court of Appeal possesses at the date of commencement of this Constitution; and such jurisdiction to hear and determine appeals from the High Court of Swaziland and such additional powers and authority, as may be prescribed by or under any law for the time being in force in Swaziland.

A decision of the Supreme Court shall be enforced, as far as that may be effective, in like manner as if it were a judgment of the court from which the appeal was brought. While it is not bound to follow the decisions of other courts save its own, it may depart from its own previous decision when it appears to it that the previous decision was wrong. The

decisions of the Supreme Court on question of law are binding on other courts. An appeal from the full bench of the High Court shall be heard and determined by a full bench of the Supreme Court.

### **The High Court**

The High Court has unlimited original jurisdiction in civil and criminal matters as the High Court possesses at the date of commencement of this Constitution. It has such appellate jurisdiction as may be prescribed by or under this Constitution or any law for the time being in force in Swaziland; such revisional jurisdiction as the High Court possesses; and additional revisional jurisdiction as may be prescribed by or under any law. The High Court has jurisdiction to enforce the fundamental human rights and freedoms guaranteed by this constitution; to hear and determine any matter of a constitutional nature. The high Court has no power in a trial for the offence of treason, to convict any person for an offence other than treason. The High Court of Judicature for Swaziland shall consist of the Chief Justice, ex officio; not less than four Justices of the High Court as may be prescribed; and such other Justices of the Superior Court of Judicature as the Chief Justice may, in writing assign to sit as High Court Justices for any case or period (Draft Constitution of Swaziland 2003; p84-85).

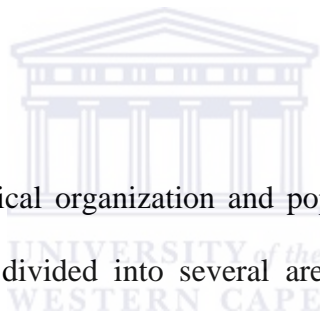
The Draft Constitution has given the courts enormous power and independence. However, it would be wise to clearly state if the Head of state would be above the courts

as it is currently, or the Head of State would respect the decisions of the courts just like every Swazi is expected to.

### **The System of Government**

The system of government for Swaziland according to the Draft Constitution (2003) is a democratic, participatory, Tinkhundla-based system, which emphasizes devolution of state power from central government to Tinkhundla areas and individual merit as a basis for election or appointment to public office.

### **Tinkhundla**



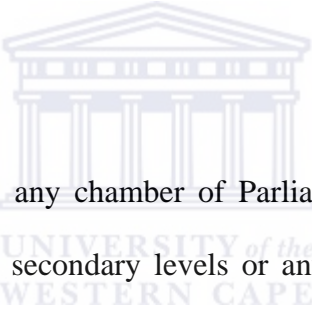
For the purposes of political organization and popular representation of the people in Parliament, Swaziland is divided into several areas-fifty-five- called Tinkhundla. An Inkhundla is established by the King on the recommendation of the Elections and Boundaries Commission; consists of one or more chiefdoms which act as nomination areas for the elected members of the House (the primary level elections); is, among other things, also used as a constituency for the elected members of the House (the secondary level elections). (Draft Constitution of Swaziland, 2003, p.49). The Tinkhundla units or areas, inspired by a policy of decentralization of state power, are the engines of development and the central pillars underpinning the political organization and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered.

An Inkhundla as a local authority area is under the general administration of an executive committee called Bucopho. Bucopho consists of persons elected from the chiefdoms or polling divisions within an Inkhundla. Bucopho operates under the chairmanship of the elected member of Parliament who supervises the activities of the Inkhundla and also convenes and presides over meetings of the Inkhundla. An Inkhundla represented by the Bucopho has a corporate status and may perform acts as bodies corporate may perform.

Swaziland is divided into four administrative Regions, namely, Hhohho, Lubombo, Manzini and Shiselweni. The Elections and Boundaries Commission divide each Region into as many Tinkhundla as may be recommended. Each Region has Regional Council consisting of persons nominated by each Inkhundla in that Region from among the Bucopho members in the Region. A Regional Council shall advise the Regional Administrator, on the administration of the Region and coordinate social and economic development of the Region and perform such other functions within the Region as may be prescribed. Regional Council may be subdivided into portfolio committees. Each region is headed by an administrative official called the Regional Administrator and is appointed by the King on the advice of the Minister responsible for Tinkhundla from among the members of the House such that at least half of the Regional Administrators are elected members of the House (Draft Constitution of Swaziland, 2003).

## **Representation of the people**

Subject to the provisions of the Draft Constitution of Swaziland, 2003, the people of Swaziland have a right to be heard thorough and represented by their own freely chosen representatives in the government of the country. The women of Swaziland and other marginalized groups have a right to equitable representation in Parliament and other elective public structures. The draft further states that every Swazi or person ordinarily resident in Swaziland has a right to vote at any election of members of the House or members of the Bucophu. A person not entitled to vote is if that person is for any reason unable to attend in person at the place and time prescribed for polling except as it may otherwise be prescribed.



The election of persons to any chamber of Parliament or Bucophu shall be by secret ballot at both primary and secondary levels or any other level in accordance with the first-past-the-post system in which the person receiving the highest number of votes is elected. All nominations for Bucophu or Member of Parliament shall be open and supported by at least ten persons qualified to vote in that Inkhundla. To qualify to be voted for a person should be over eighteen years and is a citizen of or is ordinarily resident in Swaziland; a person ordinarily resident in Swaziland where that person has lived in, or has been associated with, that Inkhundla for a period of not less than five years or is permanently resident in Swaziland and has relevant documents to that effect.

### **Elections and Boundaries Commission**

There shall be an independent authority for Swaziland consisting of chairman, deputy chairman and three other members. The members shall be appointed by the King on the advice of the Judicial Service Commission as to the chairman and deputy chairman; as to the other members, the Minister responsible for elections after consultation with the Minister responsible for local government. The term of office for the Commission shall not exceed twelve years without the option for renewal. The Commission shall as soon as practicable after every election produce and submit a report on that election to the minister responsible for elections stating the general conduct of the elections and the number of voters who participated; any irregularities or abnormalities observed; whether any nomination or election was disputed and with what result; any observed or remarkable peculiarities; recommendations if any. The Commission shall state whether any alteration is necessary to the boundaries of any Inkhundla; any one additional Inkhundla or more should be established; or any Inkhundla should be abolished or merged with any other (Draft Constitution of Swaziland, 2003,p56-57).

### **Composition of Parliament**

The Parliament of Swaziland consists of a Senate and a House of Assembly.



## **Senate**

The Draft Constitution (2003) p.56 stipulates that senate shall consist of not more than thirty-one members who shall be elected or appointed in accordance with this section. Ten senators, at least half of who shall be female, shall be elected by the members of the House at their first meeting so as to represent a cross-section of the Swazi society. Twenty Senators, at least eight of whom shall be female, shall be appointed by the King acting in his discretion after consultation with such bodies as the King may deem appropriate. The Senators appointed shall be persons who in the opinion of the King are able by reason of their special knowledge or practical experience to represent economic, social, cultural/traditional or marginalized interests not already adequately represented in Parliament; or are by reason of their particular merit, able to contribute substantially to the good government and progressive development of Swaziland.



## **House of Assembly**

The House of Assembly shall consist of not more than seventy-six members composed of not more than sixty members elected from Tinkhundla areas serving as constituencies; not more than ten members nominated by the King acting in his discretion after consultation with such bodies as the King may deem appropriate; four female members specially elected from the four Regions; the Attorney-General who shall be an *ex officio* member. The nominated members of the House shall be appointed by the King so that at least half of them are female; and so as to represent interests, including marginalized

groups, not already adequately represented in the House. A person qualifies to be appointed, elected or nominated as Senator or a member of the House if the person is a citizen of, or ordinarily resident in Swaziland; has attained the age of eighteen years and is a registered voter; has paid all taxes or made arrangements satisfactory to the Commissioner of Taxes; and is registered as a voter in the Inkhundla in which that person is a candidate (in the case of elected members) (Draft Constitution of Swaziland 2003, p 57).

### **Legislation in Parliament**



The supreme legislative authority of Swaziland vests in the King-in-Parliament. The King and Parliament may make laws for the peace, order and good government of Swaziland. The power of the King and Parliament to make laws shall be exercised by bills passed by both chambers of Parliament; passed by the House; passed at a joint sitting of the Senate and the House; passed by the Senate and assented to by the King under his hand.

A bill shall not become law unless the King has assented to it and signed it in token of that assent. However, it shall be presented for assent when both Houses of Parliament without any amendments or with such amendments only as are agreed to by both Houses. Where a bill that has been duly passed is presented to the King for assent the King shall

signify that he assents or withholds assent in the case of an appropriation bill, or bill for a law to amend the Constitution within ten days, or in the case of any other bill within twenty-one days.



**CHAPTER FOUR**  
**SOCIO-ECONOMIC AND POLITICAL ISSUES SURROUNDING**  
**CONSTITUTIONAL REFORM IN SWAZILAND**

This chapter looks at the co-existence of the modern and traditional system of government and the problems brought about by this duality.

**The Dual System of Government**

Swaziland has adopted a dual system of government that is characterized by the interactions among the traditional system and western models of governance. In pursuit of this unique governance system, the Kingdom has endeavored to develop modern political and administrative structures, electoral, appointive and operational institutions. At the centre of the system is the Tinkhundla, a non-partisan system that blends the Swazi traditional system with the modern Westminster system. This representative system of government provides a channel for the Swazi electoral process. One of its major objectives is to decentralize power and government administration to an extent that the delivery of services is both assured and efficient ([www.undp.org.sz](http://www.undp.org.sz)).

Whilst the modern system is underpinned by a well-documented set of Roman Dutch and English common laws, the traditional system is based on an unwritten, ambiguous and inconsistent customs. A noticeable feature of both the modern and traditional systems of government is the absence of women in decision-making positions. Men, as chiefs and

inner Councilors, particularly dominate traditional power structures, with women only acting in regency capacity and sometimes during crisis situations. Under both traditional and civil laws, women are still minors. They cannot legally contract unless a male guardian cedes authority.

At the base of the system are the communities in their respective chiefdoms, a cluster of which form an inkhundla. The Tinkhundla is the first entity for the co-ordination of development. It also reports to the Swazi National Standing Committee on traditional matters. The latter as stated earlier reports to and advises the King. Complementing this structure is Parliament, which is comprised of elected members from fifty-five Tinkhundla as well as ten members appointed by the King. In addition, the King appoints twenty members of Senate to ensure representation of special interest and minority groups, together with ten that are elected by the House of Assembly. The King appoints the Prime Minister and together they appoint Cabinet Ministers ([www.undp.org.sz](http://www.undp.org.sz)).

The saying that 'two bulls cannot rule in the same kraal' holds water for the dual of system of government for Swaziland. Issues debated and approved by the executive and legislature have been revoked by the Monarch. Some people label our executive and judiciary as rubber stamps of the traditional government. There is the Thursday Committee that plays an advisory body to the Monarch on issues of the rule of law. This committee is not known and its terms of reference have never been drawn. The calibre of the members is not known but they play a very important role to the Monarch. Such committees are problematic as their recommendations often clash with those of the

modern government. At the end of the day their decision overrules that of the executive. This bolts the traditional government and shows its strength. One can safely conclude that the traditional government supercedes the modern system of government.

‘There is nothing godly about the way our people are governed. Ask yourself, what is Godly about the continued suffering of the evicted people of Macetjeni and kaMkhweli?’<sup>1</sup> People of the above mentioned areas were evicted their land after from failing to accept a member (prince) from the royal family as their chief. They were forced to seek asylum in neighbouring South Africa. This was in the year 2001 and ever since they have been subjected to unimaginable stress and poverty. They are at the mercy of the South African government and their children are no longer attending school. They mostly depend on handouts, as they can no longer plough their own fields. They were told to return on condition they accepted the prince as their rightful chief.

Had it not been for the royal status of the prince, the people of Swaziland would have stood by the people of Macetjeni and kaMkhweli. To date the prince is under security all day through by the armed forces of the country. This goes to show that the armed forces are under the direction of the Monarch. This is evident during protests; one directive from the monarch and all hell breaks loose in the streets. People are beaten and subjected to much abuse by the armed forces. These armed forces are supposed to protect citizens and are supposed to be politically neutral. But where is the political neutrality when the people are tortured for marching peacefully on the streets?

In February 2004 Swaziland witnessed the removal of the Speaker of the House of Assembly, Marwick Khumalo. The 'reason' behind his removal was a crime in which he was a victim twenty-five years ago. At first the King said Parliament should decide if it wants to retain Khumalo as Speaker of the House. There was overwhelming support from the Parliamentarians in retaining him. However, a directive later came from the Monarch to remove Khumalo as Speaker. This situation delayed the opening of Parliament. His Majesty later opened Parliament in March. There was much anger from the nation over the sudden turn of events. However, some political groups were pleased about the revelation of the role of the Monarchy, more especially because Khumalo had been a staunch supporter of the Tinkhundla system of government.

The 'Marwick saga' is a tragedy for the whole Swazi nation because it has just pulled out the remaining legs from our governance system that was already tottering. The forced resignation of Khumalo defeated the little democracy said to be entrenched in the Tinkhundla system. It revealed a sinister element of the system; that the King has powers to overturn the people's decision. In fact, Khumalo's forced resignation amounted to a violation of not only democracy but also the people of Swaziland. This on its own eroded the people's confidence in Parliament and more so, the King who has always been held in high esteem. On its own the forced removal of Khumalo was a message from the highest authority. On its own, the involvement of the King in the forced removal of a democratically elected people's representative of the Monarch (Times of Swaziland, March 16, 2004).

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<sup>1</sup> Bonginkhosi Dlamini, Secretary General of PUDEMO, March 22 2004.

## **The Size and Structure of the Economy**

The country's Gross Domestic Product (GDP) was estimated at E8.1 billion in 1999. In real terms, the economy grew at an average of 3.7% per annum from 1992 to 1999. At about the same time, the population grew at around 2.9% per annum, suggesting an improvement in the standard of living. However, a longer review of the performance of the economy, that is, going back to the 1980s, indicates a substantial slow-down in economic performance attributed to the substantial declines in inflows of foreign direct investment as well as the large fluctuations in agriculture performance. Following the change in the political dispensation in South Africa in 1994, there has been a dramatic decline in new industrial investment (National Population Policy Framework for Swaziland, 2002).



The policy also states that in 1999 indications were that manufacturing would contribute about 36% to total GDP, followed by agriculture at about 10%. A large proportion of the manufacturing sector's value added originated from only five export-oriented industries: wood pulp production, soft drink processing, fruit canning, refrigerators and sugar processing. Since most of the industries are agro-based, the performance of the agriculture sector is important for overall economic performance. Over the years, fluctuations in the performance of the agricultural sector due to, among other things, climatic changes, have been offset by marginal expansion of the production in the manufacturing sector.



According to the World Bank classification of countries, Swaziland is considered a lower middle-income country, mainly because of its high GDP per capita. Despite this classification, there is evidence to suggest that income distribution is highly skewed, with about 43% of total consumption/income accruing to the richest 10% of the population. Estimates of poverty indicate that 66% of the population lives below the poverty line estimated at E71 per person per month. About 45% of the urban population is poor, compared to 71% of the rural population (National Population Policy Framework for Swaziland, 2002, p.7-8).

The incomes of multi-million companies such as Tibiyo TakaNgwane and Tisuka TakaNgwane is mostly enjoyed by a few-royalty. It all goes back to the era of Sobhuza 11, when he announced that he would hold the two companies in trust for the Swazi nation. Few ordinary Swazis benefit from the companies especially in terms of scholarships. Scholarships are awarded mostly to prince and princesses to overseas, whereas it allocates scholarships to ordinary citizens locally and in South Africa.

### **The Swazi Society and Culture**

Swaziland is a homogenous society with strong cultural values and practices with some having been passed down the ages and reflects a unique cultural identity. The Swazi nation is one of the few African countries still admired and attracting tourists with her beautiful cultures. The country boasts of one of the best traditional outfits on the African

continent. However, some cultural practices have been met with negative criticism especially with the advent of HIV/AIDS. These include *kulamuta*-a cultural practice whereby the brother in-law expresses and acts on his romantic feelings towards his wife's younger sister, usually with the intention to marry her as well; *sitsemu*- polygamous marriage, when a man marries more than one woman; *kungenwa*-a cultural practice whereby the younger brothers of the deceased or paternal cousins levirate the deceased's lineage.

### **Women and Gender Equality**

Gender relations in the country are not balanced. They favour males over females in almost everything. Culturally, women are minors, and this minority status is reinforced by marriage under both customary and common law. Power is vested in males at family, community and national levels. At family level from the number of children to contraceptives men mostly take decisions. At national level, there are few women in decision-making structures. Traditionally, all chiefs are males and females only act in regency until the rightful heir is installed.

Women cannot access Swazi Nation Land on their own rights; they have to be assisted by male relatives, a son, brother or father. On the other hand, only unmarried men cannot access Swazi Nation Land on their own right. However, the current draft constitution is

aiming at changing the *status quo*. Women are slowly realizing and fighting for their rights, however, they are met with much resistance especially from male traditionalists who view it as wanting to take over. These male traditionalists argue that males and females would never be equal. Women take such resistance as a challenge and keep fighting for their rights. Even traditional mourning is a discriminatory practice as it restricts the widow on productivity and social interaction.

### **The Legal Framework and the Rule of Law**

Like the land tenure system, Swaziland operates a dual legal system. It consists of the Roman-Dutch Law and Swazi Law and Custom. The Swazi Law and Custom is unwritten and often clashes with the principles of the received Roman-Dutch Law. However, Government has embarked on an exercise to codify Swazi Law and Custom. The existence of the duality in the legal system and the absence of a Law Reform Commission have been seen as contributing factors to the slow development of the law.

The current constitutional framework consists mainly of three pieces of legislation. The first is the King's Proclamation to the Nation of 12<sup>th</sup> April 1973 together with its various amendments. The Proclamation is the Supreme Law of Swaziland. The Proclamations among other things exclude the Bill of Rights and entrusts all executive, judicial and legislative powers in the King. The Executive, Judiciary and Legislature continue to

exercise these powers through delegated authority. The Proclamation further empowers the King to make, amend and repeal any law (National Population Policy Framework for Swaziland, 2002, p.10).

The second are the provisions of the Constitution of 1968 that were saved from repeal when the constitution was abrogated in 1973. The third is the Establishment of Parliament Order of 1992 that establishes Parliament and makes provision for the government system. It empowers the King to appoint the Prime Minister. The King in consultation with the Prime Minister appoints Cabinet Ministers. It also empowers the King and Parliament to make laws for the peace, order and good governance of Swaziland. However, the present constitutional framework is under review. The Constitutional Review Commission that was appointed in 1996 to redraft the constitution has already presented its report and the drafting of the Constitution (National Population Policy Framework for Swaziland, 2002,p.10).

On page 11 of the National Population Policy Framework, it states that the Government has not signed or ratified a number of important international instruments like the Universal Declaration on Human Rights of 1948 and the Convention on the Elimination of all Forms of Discrimination Against Women of 1979. Some international instruments that have been ratified have not been incorporated into national laws. These include the Convention on the Rights of the Child, the African Charter on Human and People's rights, which were both ratified in 1995.

Since the repeal in 1973 by the late King Sobhuza 11 of the 1968 Independence Westminster-model constitution and its bill of rights, the Kingdom has drifted into virtual state of emergency. Owing to growing international calls for reform and waves of political dissent, particularly from the trade union movements, the country has witnessed a lot of constitutional reform commissions whose effect has been to rather delay constitutional reform than to provide an avenue for any lasting and meaningful change. Someone from the royal family, usually a prince, heads these commissions. These commissions take years to report and their reports are often biased towards the *status quo*. One tends to wonder how else the results could be considering the composition of the commissions. Opposition political parties remain banned and any forms of political expression, such as protest rallies or meetings, remain prohibited.



## CHAPTER FIVE

### CONCLUSION

As a Kingdom that has never been touched by the terror of slavery or the pain of apartheid, Swaziland has fiercely guarded its culture and customs. But, it now must move into the 21<sup>st</sup> century, taking with it the best of its culture and customs, leaving behind that which no longer serves the people. Democracy is defined as the political institution that enables citizens to influence the decisions affecting their lives and have oversight over the institutions implementing those decisions. Seen in this way democracy can therefore be understood to be a continuous social process of promoting access to fundamental rights and freedoms-a process where people seek to expand these rights and the space within which these rights can be affected and protected.

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From the definition above, democracy points to a people-centered government. It is a government that rests on both the consent and the knowledge of the people and also provides structures through which the people can influence national decision-making. Swaziland is in need of democratic governance. She needs to have a mechanism that vests rights on people and also puts constitutional requirements upon government to satisfy these needs.

The study has shown that Swaziland has a traditional system of governance, which coexists, with the modern system comprising Parliament and Cabinet. Whilst the modern

system is underpinned by a well-documented set of Roman Dutch and English Common Laws, the traditional system is based on an unwritten set of Swazi laws and customs. Because of its unwritten status, there are ambiguities and inconsistencies. The governance of Swaziland like the land tenure is a product of the two main influences- the traditional and modern. The former is dominant upon Swazi Nation Land (SNL), and the latter Title Deed Land (TDL). At the apex of both systems, however, is the King.

There is the governance of the chiefs who amongst others have the highly important function of land allocation. In 2001 in the Macetjeni area, people were evicted not only out of the area but also out of the country, as they did not want to pay allegiance to a certain chief. These people, even to date, are refugees in South Africa. Those who went to offer their apologies to the chief were told to return.

Not only has Swaziland been under fire from local progressive groups to democratize, but from the western world as well. Western governments, through western envoys stationed in the Kingdom, argue that while the maintenance of a people's customs and tradition is often admirable, they should be modified or changed when they impede the natural aspirations of the people for liberty and freedom. The basic rights and aspirations of all Swazi citizens must be guaranteed.

A noticeable feature of both the modern and traditional systems of governance is the absence of women in decision-making positions. Men, as chiefs and inner councilors, particularly dominate traditional power structures, with women only acting in regency in

times of crisis. Under both traditional and civic laws, women are still minors. They cannot largely contract unless a male guardian cedes authority. Even in the case of land allocation, women do not have access unless married or have a son who could act on her behalf. This leaves widows and unmarried women at a disadvantage.

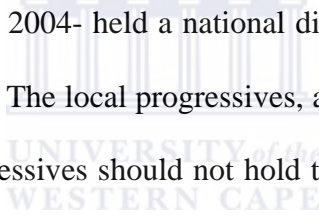
However, it is crucial to note that pressure from the West will not make the people of Swaziland turn their back on their traditions. They have their own level of awareness and will effect change as they see fit at their own pace-which in a culture of consultation can be slow. Swazis, especially those from the rural areas, have an extreme resistance to external forces. The educated ones, however, do realize that any institution too still will not survive. The pace is getting faster each day of the country's progress but only the Swazi people can decide on the pace of change.

The absence of progressives in the Constitutional Review Commission will undoubtedly have effects on the whole Constitution. Because of their absence they will continue to shun the process and deprive the document of the valuable submissions they would otherwise have submitted. Their disassociation from the Draft Constitution means that it is not every Swazi who had a voice in the making of the Constitution. It also means that the final document would not be representative of the entire Swazi Nation. It is therefore recommended that the local progressives be given a platform to voice out their concerns and in the process embrace the document. Their main argument was the appointment of the Commission, that it was not democratically elected. However, it would have been wise of them to be in that Commission so as to voice out their concerns and advocate for



change. To disassociate the very same vehicle for the change one wants is to my opinion not a clever move.

For the Western world to constantly threaten the Kingdom and not offer help is not recommended. The Kingdom by drafting a constitution has shown to some degree its willingness for change. Therefore, it would be human of them to send political/constitutional experts to help the Kingdom in its way forward. These politicians/constitutional experts would not be here to tell what the people should have within their constitution, but to help in their constitutional process and offer expertise advice.

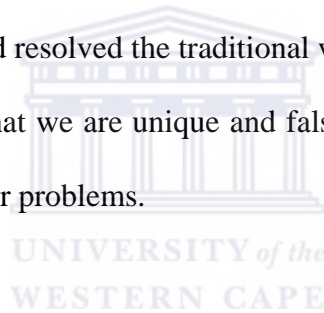


The country recently- July 2004- held a national dialogue and invited all representatives of all people in Swaziland. The local progressives, as usual, shun this dialogue. The King mentioned that local progressives should not hold their meetings outside the country but here in Swaziland. The People's United Democratic Movement (PUDEMO) put a test on the King's statement and celebrated their anniversary. However, they were met with police brutality and some of their leaders were detained for a couple of hours for questioning. To them, this was a sign that Swaziland is still not prepared for change. The King was out of the country at the time and on his return He was shocked at the predicament that befell the progressives and wanted to know who was responsible for it.

It is recommended that local progressives should be allowed to hold their meetings and rallies within the borders of the country. This would be as a sign of freedom of expression that the Draft Constitution is trying to advocate for. Also, it would minimize

the international limelight the country is currently facing and maybe the country would be subject of fewer sanctions and threats. There should be a clear distinction of power between the two systems of government-modern and traditional- as the uncertainty causes administrative problems. We cannot as a country continue to strive in this uncertainty.

Lastly, it is worth noting that Swaziland has adopted the habit of addressing matters that are by nature political or legal the traditional way because it provides the easiest route out of a sticky situation. This could be said that it started in 1973 when a matter that was purely political or constitutional by nature and requiring a political or constitutional solution was addressed and resolved the traditional way. As Swazis, we have it embedded in ourselves the attitude that we are unique and falsely pride ourselves in the abilities to find unique solutions to our problems.



The argument put forward by King Sobhuza 11 when he repealed the independence constitution was that it was unworkable and threatening to divide the Swazi Nation. If the constitution were unworkable and divisive, the logical and constitutional way to follow would have been to amend or remove the offensive clauses as opposed to repealing the whole constitution and replacing it with a traditional structure. But the chosen course of action meant that the King had all along sought to revert to traditional institutions. Herein lies the problem of the dual system of government in Swaziland that makes a mockery of Constitutional reform.

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